IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.S.RADHAKRISHNAN
&
THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

MONDAY, THE 1ST JANUARY 2007 / 11TH POUSHA 1928

MACA.No. 64 of 2004

OP(MV).2056/1997 of MOTOR ACCIDENT CLAIMS TRIBUNAL, ERNAKULAM
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APPELLANT/3RD RESPONDENT

THE ORIENTAL INSURANCE COMPANY LIMITED,
ALUVA NOW REPRESENTED BY ITS ASSISTANT MANAGER,
REGIONAL OFFICE, METRO PALACE, KOCHI-18

BY ADV. SRI.MATHEWS JACOB

RESPONDENTS: PETITIONER AND RESPONDENTS 1 AND 2
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1. ABDUL KHADER S/O. MARAKKAR,
CHANTHAPPADAM HOUSE,
MANAM P.O., N. PARVUR.
2. V.K.SAINABA, THACHAVALLATH HOUSE,
THAIKKATTUKARA P.O., ALUVA.
3. MUHAMMED S/O. MEETHIYAN, PALATH HOUSE,
ODAKKALIL, AKKUNNAMKARA, ASHAMANNOOR P.O.,
KUNNATHUNADU.

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON 01/01/2007, ALONG WITH MACA 72/2004 ETC.THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.S. RADHAKRISHNAN & M.N. KRISHNAN, JJ.

M.A.C.A. Nos. 64, 69, 71, 72 and 82 of 2004

Dated: 1st January, 2007.

JUDGMENT

Krishnan, J.

M.A.C.A. No 69 of 2004 is filed against the award passed in O.P. (M.V) No 2058 of 1997 of the Motor Accidents Claims Tribunal, Ernakulam and M.A.C.A. Nos. 71, 72 and 82 are filed against O.P. (M.V) Nos. 2057, 2063 and 2181 of 1997 of the same Tribunal and M.A.C.A.No 64 of 2004 is filed against the award passed in O.P. (M.V) No 2056 of 1997. All the claim applications were filed by the claimants who sustained injuries in a bus accident. The Insurance Company has preferred these appeals contending that the driver did not have an effective valid driving licence and badge at the time of accident to drive the vehicle and therefore the Insurance Company is not liable to indemnify the owner as there is breach of conditions under Sections 147 to 149 of the Motor Vehicles Act. Though notices are served on the claimants as well as on the owner

and driver none of them had entered appearance.

2. Heard learned counsel for the Insurance Company.

3. Learned counsel for the Insurance Company would contend that the Tribunal failed to consider the question whether the Insurance Company is liable to indemnify the owner. It is also stated that a letter from the Regional Transport Officer was produced as Ext. B2 which revealed that the driver of the bus had only a badge to drive an autorickshaw and therefore he was not having a valid licence to drive a bus and therefore the Insurance Company should be exonerated from the liability. It is also contended that the Insurance Company filed an application for a direction to the third respondent to produce his driving licence and badge and that was also not complied with. Under these circumstances Insurance Company seeks exoneration from the liability. It is also settled that the claimants have to be compensated by the Insurance Company and the only right if there is breach of policy condition, is the right to get reimbursement from the owner of the vehicle. We have perused the award. The Tribunal has not considered this question at all and we do not find from the award that there was a contention also to this effect. Learned counsel would contend that the said contention

has been raised but has not been considered. So far as the quantum of compensation is concerned, it is not under challenge and so we do not interfere with the said finding. Similarly it is the liability of the Insurance Company to compensate the third party and to claim reimbursement from the owner, if there is breach of policy condition. Therefore the question whether there is breach of policy condition is a matter to be considered by the Tribunal. For the said purpose, we are inclined to remit the cases to the Tribunal to grant an opportunity to the Insurance Company to adduce evidence and produce documents in support of the contention regarding the breach of policy condition.

4. Therefore, the appeals are disposed of as follows:

(i) The finding on the quantum is confirmed.

(ii) The Insurance Company is directed to compensate the claimants and it shall have the right to get reimbursement from the owner if there is breach of policy condition.

(iii) The Insurance Company is given an opportunity to produce both documentary and oral evidence in support of the contention regarding the breach of policy condition and for the said purpose it is directed to take out notice to the owner of the

vehicle which was insured with it to determine the said question. Parties are directed to appear before the Tribunal on 12th February, 2007.

SD/-
(K.S. RADHAKRISHNAN, JUDGE)

SD/-
(M.N. KRISHNAN, JUDGE)

01/01/2007
en/

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